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December 16, 2011

VIA ECF AND FEDERAL EXPRESS

Honorable Nina Gershon
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: ***Linde, et al. v. Arab Bank plc***, Case No. 04-cv-2799 (NG)(VVP)
and related Cases
Plaintiffs' Proposed Pretrial Scheduling Order

Dear Judge Gershon:

I write today on behalf of Plaintiffs in the above-captioned cases pursuant to your direction to the parties in your December 6, 2011 Order "to confer and propose in writing an agenda for future scheduling dates to be discussed at the December 19, 2011 conference." See *Linde* ECF No. 773 at 8. The parties exchanged proposed scheduling dates; however, we have been unable to agree. Therefore, Plaintiffs hereby attach their Proposed Pretrial Scheduling Order for Your Honor's consideration.

The parties reached general agreement on early benchmarks prior to a December 14, 2011 status conference with Magistrate Judge Pohorelsky, and the Magistrate Judge's Order setting the close of fact and expert discovery for this first trial on March 31, 2012 represented this general agreement. The parties' proposals, however, diverge over two primary issues beyond these preliminary benchmarks. Plaintiffs seek the entry of a schedule to move these cases forward to a 2012 trial of American claims under the Antiterrorism Act where Plaintiffs allege that Hamas was responsible, while Defendant seeks to use trigger dates to set the schedule based (1) on this Court's decision regarding the Bank's putative case-in-chief expert witnesses Anne T. Vitale and Paul Allan Schott, and (2) the Second Circuit's decision on the Bank's pending consolidated collateral-order appeal and *mandamus* petition.

The Bank has presented a proposed sequencing of *Daubert* motions to encompass the expert witnesses to be discussed before Your Honor on Monday. Plaintiffs believe that any *Daubert* motions should correspond with the filing of any permitted motions for summary judgment to promote efficiency in the schedule.

Furthermore, the Bank's filing of a *mandamus* petition and collateral-order appeal should not in effect stay these proceedings *sine die* until the Second Circuit issues its decision. The only issues that could conceivably be impacted by the

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applicable Rule 37 sanctions would be encountered only late in the pre-trial process in connection with certain possible motions *in limine* and proposed jury instructions. Although the Bank maintains that the delay it seeks is necessary so that its contemplated motion for summary judgment could incorporate the decisions of this Court and the Second Circuit, Plaintiffs believe that such briefing, to the extent permitted, can proceed without a decision from the Second Circuit.

Under Plaintiffs' proposed Scheduling Order, a trial date could be reasonably set for this summer subject, of course, to the Court's schedule. In contrast, the earliest conceivable trial date under the Defendant's proposal would be mid- to late-2013 – more than nine years after Plaintiffs' initial complaint was filed in *Linde*.

Plaintiffs are prepared to discuss their Proposed Pretrial Scheduling Order at the upcoming pretrial conference currently scheduled for December 19, 2011 before Your Honor and are also prepared to discuss the pending motions to exclude with regard Anne T. Vitale and Paul Allan Schott and any other issues the Court may wish to raise.

Respectfully submitted,



Michael E. Elsner

Enclosure – Plaintiffs' Proposed Pretrial Scheduling Order

MEE/lm

cc: All counsel of record (via ECF and electronic mail)
Magistrate Judge Viktor V. Pohorelsky (via Federal Express)

PLAINTIFFS' PROPOSED PRETRIAL SCHEDULING ORDER	
Event	Deadline/Setting
Deadline for Submitting List of all "May call" Fact Witnesses (per Order of Magistrate Judge Pohorelsky from 12/14/2011)	1/9/2012
Service of Defendant's amended or corrected case-in-chief expert reports for Paul Allan Schott and Anne T. Vitale and production of reliance materials and previously agreed-upon expert discovery. If Court requires no amendment to current expert reports for Paul Allan Schott and Anne T. Vitale, date for service of production of reliance materials and previously agreed-upon expert discovery	1/16/2012
Service of rebuttal reports to Paul Allan Schott, Anne T. Vitale, and Pinhas Shmilovitch case-in-chief reports, as well as production of reliance materials and previously agreed-upon expert discovery	2/13/2012
Submission of 3-page pre-motion conference letter requesting leave to file motion(s) for summary judgment	2/22/2012
Submission of letter in reply to any request(s) for leave to file motion(s) for summary judgment	2/29/2012
Complete depositions of Defendant's case-in-chief and rebuttal experts	3/2/2012
Complete depositions of Plaintiffs' case-in-chief and rebuttal experts	3/16/2012
Complete depositions of "May call" Fact Witnesses	3/23/2012
Deadline for completion of all fact and expert discovery (per Order of Magistrate Judge Pohorelsky from 12/14/2011)	3/31/2012
Deadline to file all Dispositive Motions (if permitted) and <i>Daubert</i> Motions	4/13/2012
Response to Dispositive Motions and <i>Daubert</i> Motions	5/11/2012
Replies to Dispositive Motions and <i>Daubert</i> Motions	5/25/2012
Deadline for Designation of Deposition testimony	5/25/2012
Deadline to Exchange Trial exhibits	5/25/2012
Deadline to file all Motions <i>in limine</i>	5/25/2012
Meet and Confer regarding stipulations as to facts and law and authenticity and admissibility as to evidence	5/25/2012 – 6/8/2012
Deadline for submitting objections to Designated Deposition Testimony and Trial Exhibits	6/8/2012
Responses to Motions <i>in limine</i>	6/15/2012
Proposed jury instructions due (joint or separate)	6/15/2012

Submission of final joint pre-trial order	6/22/2012
Deadline to submit any pretrial memorandum	6/29/2012
Final pre-trial conference	7/9/2012
Jury selection with trial to commence immediately following jury selection	7/16/2012